

The Administrative Law Judge denied claimant's request for penalties and other relief sought under K.S.A. 1997 Supp. 44-5,120. The claimant now seeks review on the following issues:

1. Whether respondent violated K.S.A. 1997 Supp. 44-5,120(d)(4) by producing wage statements which misrepresent the claimant's average weekly wage by concealing fringe benefit information thereby reducing compensation awarded to claimant.
2. Whether respondent violated K.S.A. 1997 Supp. 44-5,120(d)(20) by "refusing to timely file required reports or records under the workers compensation act."
3. Whether a cease and desist order should be issued pursuant to K.S.A. 1997 Supp. 44-5,120(g) requiring respondent to produce accurate wage information including all fringe benefits earned by claimant, and whether respondent should be assessed a penalty under K.S.A. 1997 Supp. 44-5,120(g)(1).

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds that it does not have jurisdiction to grant relief under K.S.A. 1997 Supp. 44-5,120.

Included in the amendments to the Workers Compensation Act by the Legislature in 1993, was a directive that "[t]he director of workers compensation . . . establish a system for monitoring, reporting and investigating suspected fraud or abuse by any persons who are not licensed or regulated by the commissioner of insurance in connection with securing the liability of an employer under the workers compensation act or in connection with claims or benefits thereunder." K.S.A. 44-5,120(a). The procedure for proceedings to determine whether a person has engaged in a fraudulent or abusive act or practice is likewise included in K.S.A. 1997 Supp. 44-5,120 at subsection (e) which provides, *inter alia*, that such person receive a statement of the charges and that a hearing thereon be conducted in accordance with the provisions of the Kansas Administrative Procedure Act (KAPA).

Although claimant may have a claim against respondent for a fraudulent and abusive act, the Appeals Board has repeatedly held that neither the administrative law judge nor the Appeals Board has jurisdiction to grant relief under K.S.A. 1997 Supp. 44-5,120. See Chambers v. Berwind Railway Services Company, Docket No. 212,478 (December 1997); Henning v. Fort Scott Family Physicians, Docket No. 147,308 (June 1996); Edwards v. SDS, Inc., Docket No. 184,306 (July 1994). The provisions of the Workers Compensation Act creating a remedy for fraudulent and abusive acts or practices contemplate a separate cause of action and provide for separate procedures for the enforcement of the same. See Elliott v. Dillon Companies, 21 Kan. App.2d 908, 908 P.2d 1345 (1996). For example, hearings conducted under K.S.A. 1997 Supp. 44-5,120 are in accordance with the KAPA, with the district courts having jurisdiction to hear appeals on petitions for judicial review of

agency action. On the other hand, procedures for appealing workers compensation matters are set forth in the Workers Compensation Act itself with appeals from Appeals Board decisions going directly to the Kansas Court of Appeals. K.S.A. 1995 Supp. 44-556. Workers compensation claims and appeals to the Appeals Board are not administered under KAPA but under the specific statutory guidelines set forth in the Workers Compensation Act.

The Administrative Law Judge's June 4, 1998, Order simply stated that "[c]laimant's request for penalties is denied." This Order did not state whether the Administrative Law Judge was denying claimant's request for penalties based upon the provisions of K.S.A. 1997 Supp. 44-5,120(g)(1), or whether the request for penalties was denied because the Administrative Law Judge lacked jurisdiction to decide the matter. The latter would be the proper reason for denying claimant's request for penalties. The Administrative Law Judge would, however, exceed his jurisdiction if, when deciding claimant's request for penalties, he made his determination on the merits of the claim.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Application for Review filed by the claimant should be, and is hereby, dismissed as the Appeals Board lacks jurisdiction to review the Order of Administrative Law Judge Bryce D. Benedict dated June 4, 1998.

IT IS SO ORDERED.

Dated this ____ day of September 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Timothy A. Short, Pittsburg, KS
Garry W. Lassman, Pittsburg, KS
William L. Phalen, Pittsburg, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director